



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,445	06/20/2005	Yoshinori Komatsu	Q88710	6821
65565 7590 05/15/2008				
SUGHRUE-265550				
2100 PENNSYLVANIA AVE. NW				
WASHINGTON, DC 20037-3213				
EXAMINER				
OHERN, BRENT T				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
05/15/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/539,445

Applicant(s)

KOMATSU ET AL.

Examiner

BRENT T. OHERN

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date 6/20/2005
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Castenmiller (US 4,874,626).

Regarding claim 1, Castenmiller ('626) teaches a mousse-type spread, which comprises a water-in-oil type emulsion or a composition in the form of a water-in-oil type emulsion by conducting a mixing in use and a gas propellant (*See col. 3, ll. 27-52, col. 5, ll. 5-43, col. 6, l. 56 to col. 7, l. 15. The product is interpreted as being a spread, not a package, not a container and not how it is made or used or how it is placed into or taken out of the container or how it may be foamed or jetted.*).

Regarding claims 2, 5 and 7, Castenmiller ('626) teaches wherein an emulsifier is a glycerin fatty acid ester or an enzyme-processed lecithin is used for preparing the water-in-oil type emulsion (*See col. 5, ll. 5-43, col. 6, l. 56 to col. 7, l. 15. The soybean plant is known to use biological enzymes in the synthesis of lecithin.*).

Regarding claim 3, Castenmiller ('626) teaches wherein the water-in-oil type emulsion is butter (*See col. 5, ll. 5-43.*).

Art Unit: 1794

Regarding claims 4 and 6, Castenmiller ('626) teaches a mousse-type edible oil, which comprises an edible oil, an emulsifier and a gas propellant (*See col. 3, ll. 27-52, col. 5, ll. 5-43, col. 6, l. 56 to col. 7, l. 15.*).

The phrases "which is used as a spread" in claims 6 and 7, lines 1-2 of both claims are deemed to be statements with regard to the **intended use** and are not further limiting in so far as the structure is concerned (*see MPEP 2111.02*). Castenmiller's ('626) product is clearly capable of being used as such.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRENT T. OHERN whose telephone number is (571)272-0496. The examiner can normally be reached on Monday, Tuesday and Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brent T O'Hern/
Examiner, Art Unit 1794
May 8, 2008

/Elizabeth M. Cole/
Primary Examiner, Art Unit 1794